GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department - East Godavari District - Revision Petition filed by Smt T.Mangayamma W/o.Veerraju R/o.Sarabhavaram village, Devipatnam (M) East Godavari District with regard to Acs.3.44 cts of land in sy.No.180-1,180-2,180-3, 180-5, 180-6 situated at Sarabhavaram village, Devipatnam (M) East Godavari District against the orders of the Additional Agent to Government, Rampachodavaram, East Godavari District in CMA No.91/2005 dated.06.01.07 - Rejected – Orders – Issued

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SOCIAL WELFARE (TW.LTR-2) DEPARTMENT

G.O.MS.No. 85 Dated: 26.11.2015
Read the following:-

1. Revision Petition filed by Smt T.Mangayamma W/o.Veerraju R/o.Sarabhavaram village, Devipatnam (M) East Godavari District dated:25.01.2007.
2. Govt.Memo.No.827/LTR-2/2007, Dated. 13.02.2007.
3. From the Additional Agent to Government, Rampachodavaram, East Godavari District CMA No.91 of 2005, dt. .01.2013.
4. Govt.Lr.No.827/LTR-2/2007, dt.26.05.2015

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ORDER:-

In the reference first read above, Smt T.Mangayamma W/o.Veerraju R/o.Sarabhavaram village, Devipatnam (M) East Godavari District has filed a Revision Petition before the Government against the orders of the Additional Agent to Government in CMA No.91/2005 dated.06.01.07, wherein the Additional Agent to Government Rampachodavaram set aside the orders passed by the Special Deputy Collector (Tribal Welfare), Rampachodavaram in LTRP No.142/2004, dated 29.09.2004 with regard to Acs.3.44 cts of land in sy.No.180-1,180-2,180-3, 180-5, 180-6 situated at Sarabhavaram village, Devipatnam (M) East Godavari District.

2. The Government, in the reference 2nd read above, have admitted the said Revision Petition and requested the Project Officer, ITDA, Rampachodavaram and Additional Agent to Government to furnish the parawise remarks and connected records on the Revision Petition.

3. In the reference 3rd read above, the Additional Agent to Government and the Project Officer, ITDA, Rampachodavaram, East Godavari District has furnished parawise remarks along with the connected records.

4. The facts of the case in brief are:

The Special Deputy Collector cum Agency Divisional Officer, Rampachodavaram by his orders in LTRP No.142/2004, dated 29.09.2004 passed orders in favour of Revision Petitioner (Non-tribal) with regard to the land measuring an extent of Ac.3.44 cts of land in Sy.Nos.180-1 180-2, 180-3, 180-5 and 180-6 respectively situated in Sarabhavaram village, Devipatnam Mandal, East Godavari District.

5. The Additional Agent to Government East Godavari District passed ejectment order and decree against the Revision Petitioner who is in the possession of petition schedule land under reference and direct that the possession of land shall be kept with Government custody after due enquiry with regards to the ST claimants if any for the assignment of the Schedule Tribe landless poor People and also order to recover

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compensation as crop loss from the Revision petitioner @ Rs.8000 per annum for the illegal possession and enjoyment of the petition schedule property after the date of the orders passed in CMA 142/2004 to till the date.

6. The point for consideration is whether the order of Additional Agent to Government who dismissed the Appeal filed by the Revision Petitioner herein, by set a side the orders passed by the learned Deputy Collector (Tribal Welfare) is sustainable or not.

7. The Additional Agent to Government after perused on record, observed that as per the fair Adangals of Sarabhavaram (V), Devipatnam Mandal, East Godavari District, the plaint schedule land of measuring total extent Ac.3.44 cts in Sy.Nos.180-1, 180-2, 180-3, 180-5 and 180-6 respectively is gift deed by her father for Pasupu Kumkuma. The gift deeds are not valid under the provisions of Section 3 of Land Transfer Regulation 1 of 1959 as amended by the Regulation 1 of 1970, hence it was null and void. As per the records it is clear that the Revision petitioner or her predecessors have not got any settlement patta or title deed recognized by the Government. The Revision Petitioner have occupied the Government land or assessed wet/dry/waste/goyyalu/ government poramboke without valid title in contravention of the provisions of land transfer regulations and are liable for ejectment as it falls within the scope of 'Transfer' as defubed ybder section 2 (g) and 3 (1)(a) of APSALT Regulation 1 of 59 amended by 1 of 70.

8. Sec 3 (1)(a) (b) of APSALT regulation which deals with the subject matter extracted hereunder:

"Section.3: transfer of immovable property by a member of a Schedule Tribe:-
1(a) Notwithstanding anything by enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such a person is a member of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of Schedule Tribe or a Society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed by society members of the schedule tribe.

1(b) Until the contrary is proved any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Schedule Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Schedule Tribe".

9. The above revision petition having been stood over for consideration till 13.06.2015 before the Government and the matter having been heard in presence of both parties on 13.06.2015 the Government passes the following orders:-

10. The order of the Additional Agent to Government which is impugned herein discloses that the Revision Petitioner failed to produce relevant documents as it is gift deed by her father for Pasupu Kumkuma in contravention of the provisions of Section 2 (g) of LTR 1/1959 ambled by resulting 1/1970. Hence the question of acquisition of land under succession does not arise. However, long the possession may be the non tribal is liable to eviction from the immovable property in Agency Area. Unless he has valid right and title to it either by way of registered sale deed with prior permission if it is prior to 1970 or by way of a grant under settlement laws. Otherwise his possession becomes illegal in view over riding clause and the prohibition of alienations mentioned in Section 3 of the APSALT regulation 1 of 1959. But that the transfer of plaint schedule land which was held between two non-tribes after the regulation 1 of 1970.

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11. In the above case the sale deed which is infavour of father of Revision Petitioner is hit under the APSALT Regulation act as permission of Agent to Government is not obtained nor produced before the Court. Hence the sale deed of the father, though prior to 1970 is hit under APSALT Regulation 1/1959.

12. The Hon'ble Supreme Court in C.A.No.4602 of 1997 and batch in Samath Vs. Government of AP has held that the transfer of land by juristic person or allotment of land by State to a Non Tribe is prohibited.

13. The full Bench of Hon'ble High Court of A.P. has held that the transfer of land by one non-tribe to another non-tribe is null and void under Section 1 and 3 of APSALT Regulation 1 of 1970 (as reported in 1993 (1) ALT page 409 (FB).

14. The petitioner is also not entitled to get settlement patta under the Ryotwari Settlement Regulation 1 of 1970 as he failed to satisfy all the 3 conditions as required under section 7 of the said Regulation.

15. Therefore the petitioner is liable to be ejected as he did not get permission from Agent to Government as required under Sec.3 of Regulation 1 of 1959. Even such a embargo against sale in favour of Non-Tribe is there even under the Agency tracts interest and Land Transfer Act 1917, unless it is with the previous consent in writing of Additional Agent to Government.

16. The Revision Petitioner did not produce any other valid document of title and the APSALT Regulation basically is meant for the protection of interest and welfare of only Schedule Tribes but not of Non-Tribes as per the judgment of the Hon'ble High Court of A.P. and the Hon'ble Supreme Court.

17. A non-tribe who does not have a valid title under a document or patta or a grant under any act is not entitled to continue in possession and hence if he found to be in possession of a schedule land in Agency Area is liable to be ejected and the opportunity given to him is sufficient. As per the provisions of the said regulation, there is a presumption under Section 3 against such non-tribe and hence the concurrent findings of facts by the learned Special Deputy Collector and Additional Agent to Government are correct and the same are not liable to be interfered.

18. The contention of the learned Advocate that there is no prohibited transfer in the instant case and that the land in question was recorded as assessed waste dry of Government is not acceptable as a Non Tribe in Agency Area is not entitled to occupy or continue to be in possession of the same. If the Non-Tribe in Agency Area is evicted, an eligible tribe can be immediately assigned the said property which obviously is the object and intendment of the above Regulation. More so as held by the Full bench of Hon'ble High Court of A.P. and hence there is no error in the orders impugned in this Revision Petition.

19. There is no infirmity in the order of the Additional Agent to Government, Rampachodavaram and he has rightly set aside the order of Special Deputy Collector (Tribal Welfare), Rampachodavaram. Hence, the Revision Petition is dismissed.

20. The Additional Agent to Government, Rampachodavaram, East Godavari District is requested to take necessary action in the matter accordingly.

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21. The original record bearing No.91/2005 containing NF to 7 pages CF 1 to 45 pages received from the Additional Agent to Government, Rampachodavaram, East Godavari District, through reference 3rd read above, is returned herewith and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. A. VIDYA SAGAR,
PRINCIPAL SECRETARY TO GOVERNMENT (TW)

To:
The Collector & Agent to Government, Kakinada, East Godavari District.
The Additional Agent to Government & Project Officer, ITDA
Rampachodavaram, East Godavari District.(w.e.)
The Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District.
Copy to:
Sri Kola Satyaprasad, Advocate, ITDA, Legal Aid Cell Members Rampachodavaram – 530 288, East Godavari District
The P.S to Hon'ble Minister (SWE & TWE) for information
The P.S to Principal Secretary to Government (TW)
SF/SC.

// FORWARDED:: BY ORDER //

SECTION OFFICER